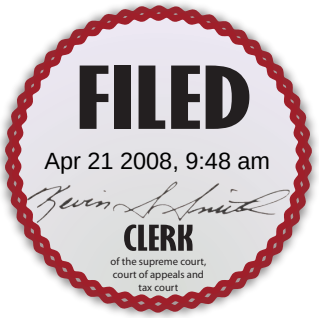

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IN THE
COURT OF APPEALS OF INDIANA

CONNIE M. HENSLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 63A01-0712-CR-559
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Jeffrey L. Biesterveld, Judge
Cause No. 63C01-0606-FA-321

April 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Connie Hensley appeals her conviction and sentence for Class B felony dealing in a schedule III controlled substance. We affirm in part, reverse in part, and remand.

Issues

Hensley raises three issues, which we restate as:

I. whether there is sufficient evidence to support her conviction;

II. whether the trial court properly excluded evidence of subsequent bad acts by a confidential informant ("CI"); and

III. whether her sentence is appropriate.

Facts

On March 19, 2006, a CI contacted the Petersburg Police Department about arranging a controlled buy with Hensley. Hensley was supposed to sell the CI ten hydrocodone pills for $10.00 each plus $5.00 for delivery to the CI's garage. Officer Chad McClellan met the CI at her garage, searched her, set up a video camera, supplied her with an audio recorder and $135.00 cash, and hid in a small room attached to the garage from where he watched the transaction through the video camera's view finder. After the transaction, the CI gave Officer McClellan the ten pills and the remaining $30.00, and Officer McClellan searched the CI again.

On June 30, 2006, the State charged Hensley with Class A felony dealing in a schedule II controlled substance and Class C felony possession of a schedule II controlled substance. Count I was later changed to Class B felony dealing in a schedule III

controlled substance and, at some point, Count II was dismissed. After a trial, a jury convicted Hensley of Class B felony dealing in a schedule III controlled substance. The trial court sentenced Hensley to the advisory sentence of ten years. Hensley now appeals.

Analysis

I. Sufficiency of the Evidence

Hensley argues that there is insufficient evidence to support her conviction. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm the conviction. Id.

A person who knowingly or intentionally delivers a schedule III controlled substance commits a Class B felony. See Ind. Code § 35-48-4-2(a)(1)(C). Hensley argues that, unlike the typical controlled buy case where the buy occurs in a place not under the CI's control, this buy took place in the CI's crowded garage. Hensley contends that Officer McClellan should have more thoroughly searched the CI and should have conducted a complete search of the garage. She claims that in the absence of such steps the pills could have come from the CI in an effort to set up Hensley.

This theory, however, was before the jury, and the jury apparently rejected it. Hensley's argument is nothing more than a request to reweigh the evidence, which we

cannot do. The jury saw the videotape of the buy and heard Officer McClellan's testimony that the CI gave Hensley the money and Hensley "hand[ed] her the package." Tr. p. 71. On appellate review, we need not evaluate whether the State disproved every reasonable theory of defense, only whether the probative evidence and reasonable inferences therefrom support the judgment. See Ogle v. State, 698 N.E.2d 1146, 1149 (Ind. 1998). The State presented sufficient evidence from which the jury could reasonably infer that Hensley delivered the hydrocodone to the CI.

II. Subsequent Bad Acts

Hensley also argues that the trial court improperly refused to admit evidence related to bad acts allegedly committed by the CI after the controlled buy occurred. "Claims of error in the exclusion or admission of evidence are reviewed for an abuse of discretion." Brown v. State, 770 N.E.2d 275, 280 (Ind. 2002). "An error is harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect a party's substantial rights." Id.

Assuming that the alleged error was properly preserved and that the trial court erroneously excluded the evidence, the alleged error was harmless. First, the CI did not testify at trial. Instead, the evidence used to convict Hensley was Officer McClellan's testimony and the videotape of the transaction. Further, evidence was admitted at trial that the CI had a methamphetamine conviction, that she agreed to be a CI to get out of jail on probation revocation proceedings, and that she was currently incarcerated. Thus, the CI's criminal proclivity was clearly before the jury. Hensley has not shown that the

exclusion of information related to the most recent charges pending against the CI affected her substantial rights.

III. Sentence

Finally, Hensley claims that her ten-year advisory sentence for Class B felony dealing in a schedule III controlled substance is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id. Hensley has met this burden.

Regarding the nature of the offense, this case is not extraordinary. Hensley sold a relatively small number of hydrocodone pills, ten, to a CI for $105.00. Our assessment of Hensley's character includes the fact that she suffers from a variety of serious medical ailments, all of which are well-documented in the record. Hensley's criminal history does include 1978 convictions for felony conspiracy to commit arson in the second degree and for two counts of misdemeanor furnishing alcohol to a minor. In 2002, Hensley was discharged pursuant to Indiana Criminal Rule 4 after having been charged with Class D felony theft. Considering the relative ordinariness of the offense, Hensley's poor health, and her lack of an extensive criminal history, we conclude that a sentence

less than the advisory is warranted in this case. A revised sentence of six years executed is appropriate.

Conclusion

There is sufficient evidence to support Hensley's conviction, and the trial court's refusal to admit evidence relating to the CI's subsequent bad acts did not affect Hensley's substantial rights. However, based on the nature of the offense and the character of the offender, we revise her sentence to six years executed. We affirm in part, reverse in part, and remand.

Affirmed in part, reversed in part, and remanded.

CRONE, J., and BRADFORD, J., concur.